



U.S. Department of Justice

United States Attorney
Southern District of New York

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September 18, 2024

BY ECF

The Honorable Mary Kay Vyskocil
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10601

Re: *United States v. Roberto Espinosa*, 21 Cr. 570 (MKV)

Dear Judge Vyskocil:

The Government respectfully submits this letter in advance of the sentencing of the defendant, Roberto Espinosa, scheduled for September 24, 2024. Roberto Espinosa was and is a member of a violent gang, affiliated with the Crips, that calls themselves ABG, which stands for Anybody Gets It or All 'Bout Guap. For years Espinosa and his fellow ABG members terrorized local communities by pumping dangerous and addictive drugs into the streets and committing shootings and slashings outside of large housing complexes. Espinosa engaged in armed crack dealing with fellow gang members on a near daily basis. Then in February 2019, Espinosa committed a pre-mediated, cold-blooded execution of Darren Scruggs. Mr. Scruggs was just 19 years old when Espinosa snuck up behind him in broad daylight and shot him multiple times. Hours later, Espinosa laughed with co-conspirator, Davion Morgan, about the murder and many months later complained with co-conspirator, Henry Jones, that the gang didn't get enough credit for the killing of Scruggs.

After being arrested and detained for killing Scruggs, Espinosa continued his participation in the gang, including regularly communicating with fellow gang members about the gang's activities. For example, after Espinosa was assaulted in Riker's Island, he spoke to Morgan about the retaliation, which had been ordered by Davion Trusty, after which Morgan committed a violent slashing that caused a deep laceration to a victim's face. After pleading guilty in his state case, Espinosa was charged with the federal crimes at issue in this case and transferred to federal custody. While in federal custody, Espinosa as not only continued to demonstrate his ongoing membership and dedication to the gang through social media posts, Espinosa also participated in a violent assault involving numerous fellow co-defendants, possessed a deadly knife, which he proudly displayed in a photograph that was posted to social media, and has continued to possess contraband cellphones, one of which was found just two weeks ago in the cell he shares with co-defendant Jamie Wilkins. Espinosa's alarming conduct while in custody undermines everything that he, defense counsel, and the mitigation specialist attempt to assert with respect to Espinosa's interest in turning his life around. More powerful than mere words is Espinosa's conduct, which

plainly demonstrates that he is an ongoing, dedicated gang member who has no regard for, much less remorse for the seriousness of his past criminal conduct, which is among the most serious of crimes someone can commit.

For the foregoing reasons, which are further discussed below, the Government submits that a sentence of 365 months' imprisonment — the top of the applicable Guidelines range — would be sufficient, but not greater than necessary, to reflect the seriousness of the law, promote respect for the law, protect the public, and ensure general and specific deterrence.¹

I. The Offense Conduct

A. Background – ABG

ABG is a violent street gang that controlled the area around the Mitchel Houses in the Bronx, New York. For years, members of ABG, including Espinosa, engaged in hand-to-hand crack cocaine deals on a near daily basis. Members of ABG actively carried guns to protect their substantial profits and their supply of drugs, as well as to protect and further the gang's reputation more generally. Profiting off the addiction of others was how Espinosa made money. And Espinosa glorified his gang membership on social media, posting photographs of himself with fellow gang members, displaying gang signs. Below is one example of a photograph Espinosa posted of him (in the middle) with Henry Jones (on the right), both displaying gang signs, and with a caption Espinosa added of, "We killing everyone. Ain't no innocents," along with emojis associated with the Crips gang.

¹ The defendant is currently serving a state sentence for his manslaughter conviction for the killing of Scruggs. The defendant has served approximately 67 months of his state sentence. Here, the defendant's conviction includes his first-degree murder of Scruggs, which was done in furtherance of his participation in ABG. Because the offenses involve overlapping conduct, the Government agrees with defense counsel that the sentence of imprisonment here should run concurrent with the sentence in Espinosa's state court manslaughter conviction. The Government also does not object to the Court applying U.S.S.G. § 5G1.3(b) and deducting from the sentence the amount of time that he has spent in custody to date, which the Government understands will not otherwise be accounted for in his federal sentence since he has been in primary state custody since his arrest in February 2019. To account for the discharged time, the Court can subtract 67 months' imprisonment from the sentence it believes to be appropriate. For example, if the Court believes that a sentence at the top of the Guidelines range – 365 months – is appropriate, it could impose a sentence of 298 months' imprisonment to account for the 67 months already served.



ABG members were prepared to and did engage in shootings to protect the gang and its drug territory. On several occasions ABG members went to nearby residential housing complexes where rival gang members lived, and ABG members opened fire or committed slashings. ABG members engaged in these acts of violence with no regard for who was in the line of fire and who might be hit by a stray bullet. Their sole focus at all times was to send the message to their rivals that ABG was in charge and should be feared. As further described below, Espinosa committed the most serious crime of all as he targeted and then murdered a 19-year-old rival gang member.

While many of the gang's activities targeted rival gang members, the gang's actions impacted every member of the communities that the gang terrorized. As Your Honor is aware, the sale of drugs like crack cocaine harms not only the drug users who become addicted to these dangerous drugs, but those people's friends and family, along with the broader community that is forced to live amongst the violence that so often comes with the sale of drugs. And indeed, this case is a perfect example of that. ABG members regularly sold dangerous drugs, carried guns, prepared to engage in shootouts, and when they engaged in shootings, they often did so on public streets and in front of large housing complexes. The gang forced entire communities to live under a constant threat of violence.

B. February 8, 2019 Murder of Darren Scruggs

Days before the February 8, 2019 murder of Darren Scruggs, Espinosa got a gun from a leading member of the gang. On February 8, 2019, Espinosa arranged to have a driver pick him

up and drive him to meet with fellow ABG members and co-defendants, Jones and Morgan. Once at the meeting location, Espinosa announced that they were going to go “spin the block,” meaning find rival gang members to shoot in retaliation for an earlier shooting. Espinosa showed the others that he had a gun and he arranged to have the driver drive them to the rival gang territory. Jones, Espinosa, and Morgan then helped direct the driver where to go and once they arrived, Jones and Morgan helped identify a rival gang member. Darren Scruggs, a 19 year-old member of JackBoyz, was having pizza with his girlfriend. Jones and the other ABG members waited for Scruggs to leave the pizza shop and then parked their car. Espinosa then got out of the car with his loaded gun.

Espinosa snuck up behind Scruggs while Scruggs was walking down the street, in broad daylight, with his girlfriend. Espinosa stood just a foot or so away and fired his gun at least two times at Scruggs, shooting him in the back. Espinosa then fled back to the car, and all three men then ordered the driver to drive them back to their neighborhood.

That evening, Espinosa and Morgan exchanged messages during which Morgan told Espinosa that he couldn’t sleep and Espinosa laughed and mocked Morgan, stating, “Lmao you can’t sleep pussy[;] chopping it up with mir.”

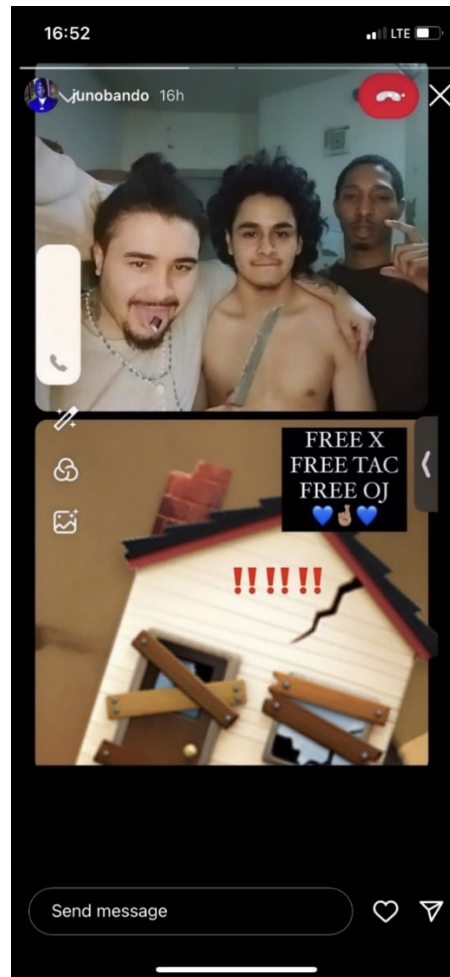
ABG members later took credit for and bragged about the murder. In fact, after Espinosa was arrested and charged with the murder, he was on a recorded jail call with Jones complaining about how ABG did not take credit quickly enough after Scruggs’s death. Later, ABG members appeared in a music video that referenced “smoking on Benz,” a taunt and brag for having killed Scruggs. On the anniversaries of Scruggs’s death, ABG members have posted photographs of Scruggs with captions like “rest in piss.” Espinosa’s standing within the gang increased significantly following the murder and has remained high given the murder and the gang’s continued use of the murder to taunt rival gangs. In a June 2020, Espinosa called Morgan, who said that guys were treating them like celebrities, to which Espinosa responded that we are celebrities.

C. The Defendant’s Conduct While in Custody

On February 14, 2019, just days after the murder, Espinosa was arrested and charged with the murder by the state. Six months later, he turned 18 years old and according to defense counsel, was transferred to an adult facility on his 18th birthday. While in custody, Espinosa continued his participation in the gang. In particular, beginning as far back as 2019, Espinosa often spoke to fellow gang members on recorded jail calls regarding the gang’s activities, including on calls with the gang’s highest leaders. In February 2021, Espinosa was assaulted while in custody, and his fellow gang member Davion Trusty ordered Morgan to commit a retaliatory act of violence. Prior to Morgan doing so, Espinosa discussed the retaliatory violence with Morgan. Thereafter, Morgan slashed a man in the face, causing a deep laceration.

On September 16, 2022, the defendant was writted into federal custody, facing charges of participation in a racketeering conspiracy, which included the first-degree murder of Darren Scruggs and dealing crack cocaine. While in custody federal custody, the defendant committed a series of crimes and engaged in other misconduct. First, the defendant possessed a large deadly

knife, which he proudly displayed in a picture with fellow gang members and co-defendants, Xavier Arau and Jamie Wilkins. Gang members were so proud of this photograph that they had it posted to social media.



April 27, 2023

Second, the defendant has continuously possessed and used contraband cellphones. This fact alone is of serious concern. Not only is it illegal for the defendant to have possessed the contraband cellphones, but such cellphones create significant dangers for facilities like MDC and for the public generally, as inmates often use contraband cellphones to communicate about crimes, including the introduction contraband into the facility or ordering acts of violence insider or out of the facility. Indeed, the whole purpose of a contraband cellphone is to have communications that one does not want to have on a recorded line that could be reviewed by law enforcement. The defendant was first caught with a contraband cellphone in February 2023. However, this did not deter the defendant who thereafter obtained another contraband cellphone, which he continued to use to post to social media. Just two weeks ago, a cellphone was found in the cell that Espinosa shares with Jamie Wilkins.

The defendant has used his contraband cellphones to publicly profess his ongoing dedication to the violent gang ABG. On August 23, 2023, after Espinosa had been caught with his first contraband cellphone, Espinosa posted the below photograph of him in custody and added the caption, “Hood is what i stand for. Pain is what I symbolize.” He further referred to walking around with “a steel.” Throughout the caption, he used “c” in lieu of “k” to show his membership in the Crips, and criticized others for not spinning a lot, meaning engaging in violence against rival gang members.



Posted August 23, 2023

Also in August 2023 he posted the below photograph of various gang members, some of whom were displaying gang signs, and added the caption, “MurdaMitchels,” a references to the Mitchels Housing complex where ABG operates. The caption also included “FreeTheYoungHoodstas,” with blue hearts in support of the Crips. Espinosa was accordingly expressing his support for other young ABG members who had been arrested.

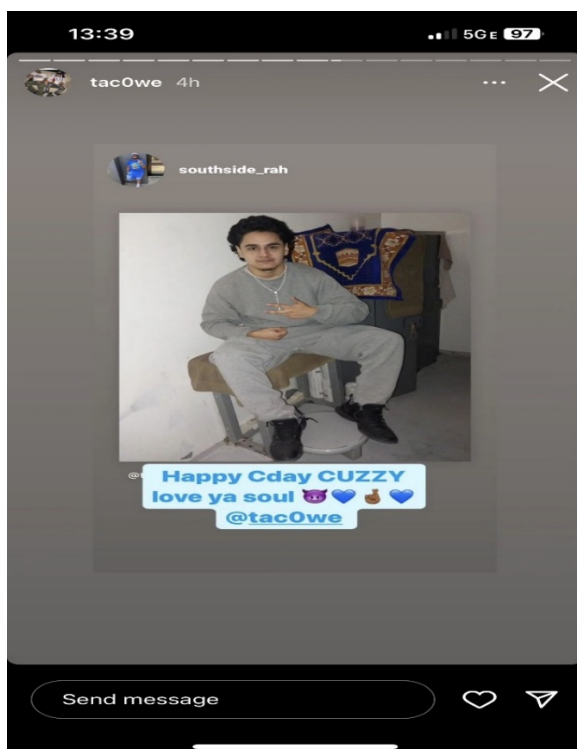
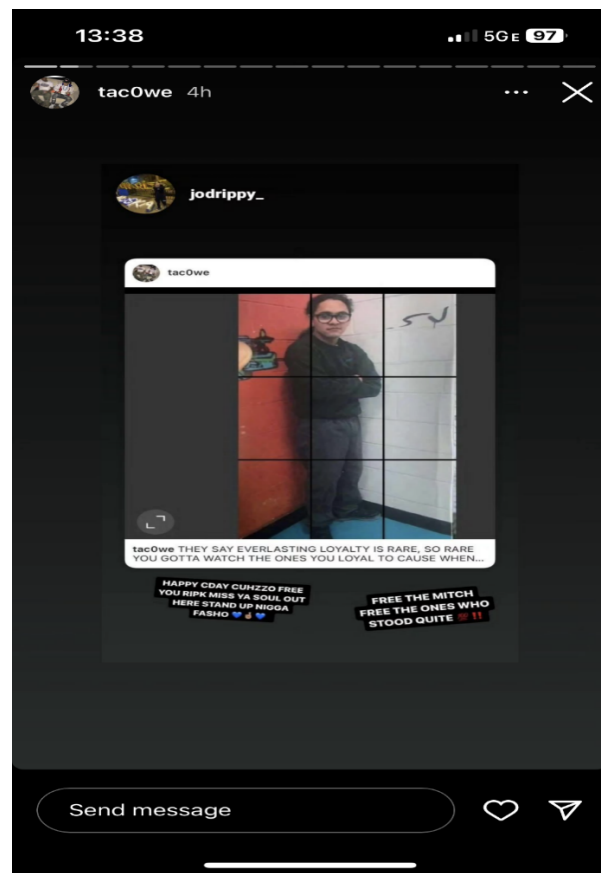


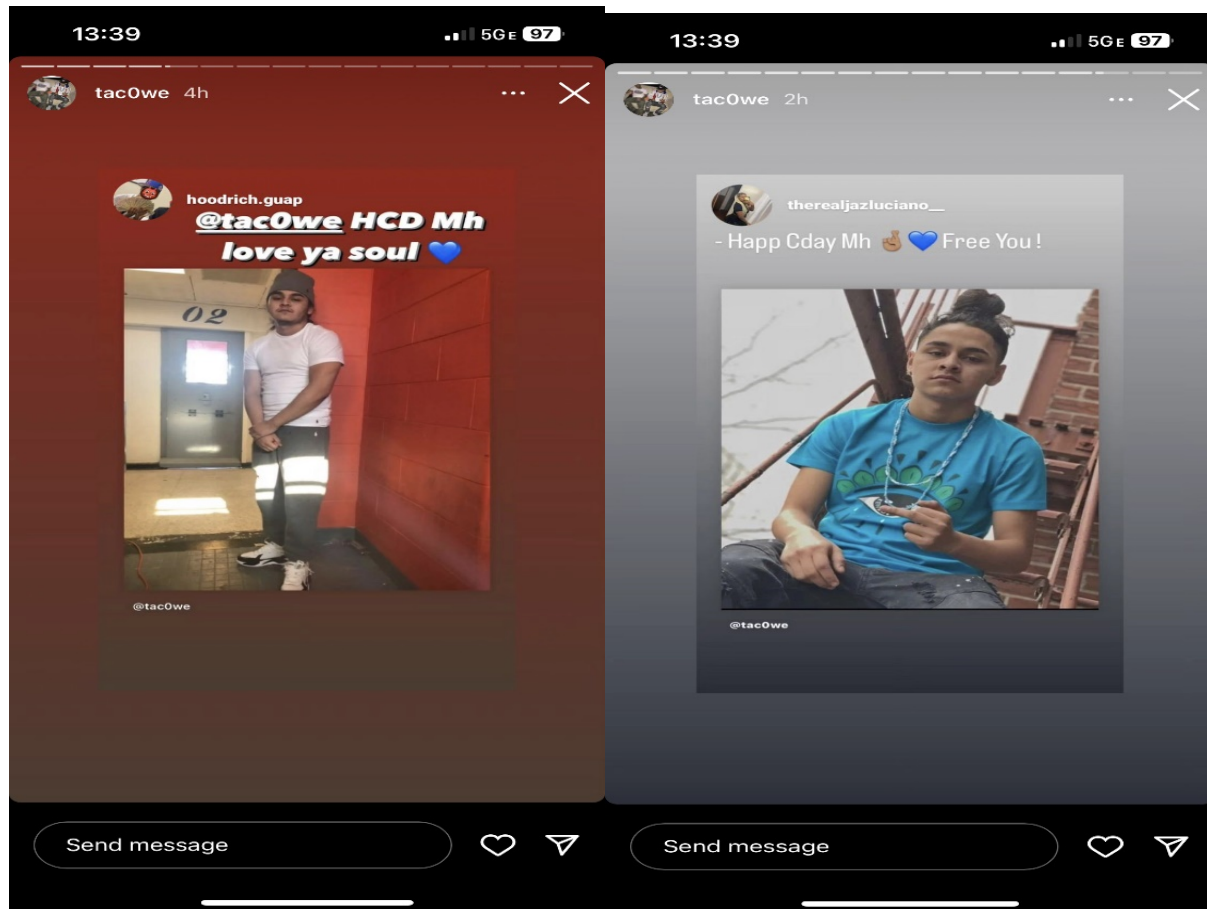
Posted August 2023

Espinosa posted the below photograph to his social media account this past December, which includes a photograph of Jamie Wilkins, Espinosa, Xavier Arau, and Cassius Miller, all ABG members and co-defendants in this case.



As some other examples, this past December on Espinosa's "C day," which is the day he was initiated into the Crips gang, Espinosa posted and reposted others' posts, all wishing him a happy C Day – again, a clear reference to and public expression of his ongoing participation in ABG and the Crips.





In addition to his own posts, the defendant has posed for photographs with other gang members while in custody, which have been posted to social media accounts, and once again provide powerful evidence of the defendant's ongoing ties to the gang. Below is a photograph of Espinosa in custody with Cassius Miller, and the caption of the photo is "Free the real ones," with blue "M" emojis, signifying the Mitchels and Crips.



Below is a photograph that was posted just a few weeks ago, August 23, 2024, where Espinosa is posing with Jamie Wilkins, both of whom are displaying gang signs. The caption included, "We made a whole blocc cause of you, lots of opps got shot cause of you."



Third, the defendant engaged in a violent assault just six months ago, well after pleading guilty in this case and even after when the defendant was initially scheduled to be sentenced. As reported in the incident report, defendant attacked a fellow inmate, punching him in the head and body with a closed fist. After orders were given to stop, three other ABG members and co-defendants in this case joined in and all refused the repeated orders to stop fighting, requiring a guard to deploy his Oleoresin Capsicum. Attached hereto are reports of Espinosa's various disciplinary offenses while at the MDC.²

Finally, in July 2024 and February 2023 Espinosa refused to obey orders, including failing to lock up in his cell when directed.

II. Discussion

A. Applicable Law

As the Court is well aware, the Sentencing Guidelines still provide strong guidance to sentencing courts following *United States v. Booker*, 543 U.S. 220 (2005), and *United States v. Crosby*, 397 F.3d 103 (2d Cir. 2005). Because the Guidelines are “the product of careful study based on extensive empirical evidence derived from the review of thousands of individual sentencing decisions,” *Gall v. United States*, 128 S. Ct. 586, 594 (2007), district courts must treat the Guidelines as the “starting point and the initial benchmark” in sentencing proceedings. *Id.* at 596. After that calculation, however, the Court must consider the seven factors outlined in Title 18, United States Code, Section 3553(a), which include the nature and circumstances of the offense, the individual characteristics of the defendant, and the need to adequately deter criminal conduct and promote respect for the law. *Id.* at 50 & n.6.

B. A Top of the Guidelines Sentence Is Appropriate in This Case

The Government respectfully submits that a top of the Guidelines sentence of 365 months' imprisonment would be sufficient, but not greater than necessary, to reflect the seriousness of the offense, to promote respect for the law, to protect the public, and ensure adequate deterrence, including by sending the message to other gang members that taking another person's life comes with the most serious of consequences. The message must be sent that those who choose to join violent gangs and thereafter distinguish themselves in that gang by committing a shooting that kills another person, will face a significant portion of their life in jail. In addition, where as here, gang members continue to affiliate with the gang while in custody and commit serious crimes while detained, there must be substantial additional consequences to deter the ongoing violence and contraband smuggling that is plaguing detention facilities and requiring the lockdowns of which the defendant complains.

1. The Nature and Circumstances of the Offense and History and Characteristics of the Defendant

² Attached as Exhibit 1 are the incident reports and photographs involving Espinosa's conduct while in custody at the MDC. Given that the reports involve information and photographs of victims, the Government asks that the materials be filed under seal.

With respect to the nature and circumstances of the offense, the defendant committed one of the most horrific crimes a person can commit – the cold-blooded and senseless murder of a 19-year-old boy. And the defendant participated in this murder as part of his years' long involvement in the violent gang ABG. The defendant was by far the most culpable actor in Scruggs's tragic death. The killing appears to have been his idea as he obtained a gun from another gang member in the days before the shooting, he helped arrange for the driver, he brought the loaded gun, and he announced the plan to spin the block. When the group arrived at the rival gang territory and spotted a target, Espinosa alone got out of the car, snuck up behind Scruggs and waited until he got as close as just a foot or so away before shooting Scruggs in the back. Espinosa made sure to get so close to Scruggs before shooting him in the back so that he could make sure that his shots were deadly, which of course they were. And Espinosa did this shooting in broad daylight, all while Scruggs stood defenseless with his girlfriend. Although Espinosa was the youngest of the three who participated in Scruggs's murder and no doubt wanted to impress his fellow gang members, he ultimately made the choice to commit this murder. As discussed below, that decision to commit a planned killing distinguished him as particularly violent, amongst a gang full of violent people.

As Your Honor heard from Scruggs's mother, grandmother, and friend at the sentencing of Henry Jones, Scruggs's murder has devastated Scruggs's family and friends. As some of Scruggs's family and friend bravely and powerfully expressed, Scruggs was a beloved son, grandson, and friend, and the lives of his family and friends will forever be changed because of Espinosa's actions. Scruggs's mother will never be able to see her son grow up and is forced to live every day with that realization. Espinosa's family and friends are free to talk to him every day on the phone, visit him in prison, and Espinosa will have an opportunity to live a free life after serving time in this case. However, Scruggs and his family and friends will never again have those opportunities because Espinosa took that away from them, and the gravity of that fact necessitates among the highest sentences of imprisonment.

While Scruggs's premeditated murder is clearly the most serious crime, Espinosa committed that crime in the context of his participation in ABG, wherein he also sold crack cocaine with fellow gang members on a near daily basis and kept a gun nearby. Indeed, Scruggs's murder helped the ABG gang solidify itself as a dangerous gang whose control over its drug territory could not be challenged. As discussed above, the drug dealing that Espinosa engaged in with ABG forced an entire community of people to live amongst deadly and dangerous drugs and the constant threat of violence associated with such drug dealing.

And contrary to his repeated claims of remorse, regret, and purported disavowal of the gang, Espinosa's conduct while in custody makes clear that he remains a proud and active ABG member. Espinosa's counsel asserts that during his time at a juvenile detention facility Espinosa made significant progress and committed himself to turning his life around. However, according to the defendant's submission, Espinosa was only in a juvenile detention facility for six months, after which he was transferred to a facility where, within months, he was on recorded jail calls communicating with high-level members of the gang about gang affairs. Although Espinosa did not order the retaliatory slashing that Morgan committed, Espinosa spoke to Morgan beforehand about how Morgan had 60 hours to commit retaliatory violence. And when brought into federal

custody, Espinosa repeatedly posed for photographs with fellow gang members, often displaying gang signs, including as recently as just a few weeks ago.

In considering the characteristics of the defendant, Espinosa asks the Court to consider his difficult upbringing and mental health challenges as mitigating factors. The Government is of course sympathetic to the instability involved in defendant's upbringing and the defendant's mental health struggles, which are relevant considerations at sentencing. But ultimately the defendant chose to involve himself in this violent gang and in doing so, he created the very conditions of a difficult neighborhood of which he claims to have been a victim. Furthermore, the Government submits that the weight to be given to the defendant's upbringing is different when one not only chooses to join a gang, but then goes so far as to commit a murder. Simply put, committing a murder was not a requisite part of gang membership; murder was something Espinosa chose to do to further his status in the gang, and he was quite successful in doing just that, as evidenced by his referring to himself as a celebrity.

Similarly, the argument that the defendant is a product of growing up in a low-income and violent neighborhood ignores the fact that the overwhelming majority of citizens similarly born and raised in the South Bronx face many of the same conditions and challenges as the defendant and yet choose to live honest, law-abiding lives from the outset of their young adulthood, attending school and working to maintain lawful employment in the hopes of improving their own lives and those of their families. Here, the defendant made choices each and every day to involve himself with a violent gang. And what's more, the defendant did not just join a gang, he chose to commit a murder in connection with his membership in that gang, something done by very few even in that violent gang.

2. Need to Promote Respect for the Law

A sentence of 365 months' imprisonment is also necessary to promote respect for the law. The ABG gang developed and operated according to its own code of conduct, which demonstrated no regard for the law. The gang's core principles were in direct contravention of numerous laws and its members all considered themselves above the law. As a member of ABG, Espinosa demonstrated a complete disregard for the law, day after day for years. In addition, the defendant's conduct while in custody plainly demonstrates that he has not changed his ways and continues to have no regard whatsoever for the law. Espinosa claims to be remorseful and to "no longer [be] involved with the gang," (PSR ¶ 139), however, his conduct while in custody and his many social media posts, just a few of which are copied above, have shown the opposite. The defendant's repeated serious offenses in custody demonstrate that he has no respect for the law, is still committed to his gang membership, and poses an ongoing danger to the public. Espinosa has used Scruggs's death to enhance his position in the gang and to date has shown no interest whatsoever in giving up his privileged position in that gang.

3. The need for the sentence imposed to afford adequate deterrence to criminal conduct and to protect the public from further crimes of the defendant

A sentence of 365 months' imprisonment is also necessary to ensure general deterrence. Unfortunately, ABG is just one of many violent gangs that operate in and around New York and recruit young members by glamorizing violence, drug dealing, and the money made off these illegal activities. Indeed, while law enforcement's investigation in this matter led to the arrest of numerous members of ABG, the gang continues to operate both in and outside of custody. A sentence of 365 months' is therefore necessary to send the appropriate message that individuals who join these violent organizations, participate in armed drug dealing with the gang, and thereafter commit the most serious of violent crimes, will face very long sentences of imprisonment.

Espinosa in particular is glorified within the gang because he murdered Scruggs. To this day gang members celebrate Scruggs's murder and elevate Espinosa's status due to his role as the shooter in that murder. ABG gang members and members of rival gangs will take notice of the sentence Espinosa receives for his role in this murder and it will send a message about the consequences for committing the shootings that these gangs participate in and support.

A sentence of 365 months' imprisonment is further necessary to ensure specific deterrence and protect the public from further crimes of the defendant. Although this is the defendant's first conviction, the fact that for years the defendant chose to participate in a violent gang, each and every day as his way of life, requires a significant sentence to achieve future deterrence. The defendant's ongoing commitment to the gang while in custody, even after a manslaughter conviction, after being charged with federal racketeering and even after pleading guilty, demonstrates the defendant's ongoing loyalty to the ABG gang, who he considers to be like family. Once again, the defendant's ongoing criminal conduct while in custody plainly demonstrates that the defendant has not come close to making the necessary changes in his life and thus a substantial sentence of imprisonment is necessary here.

4. The Need to Avoid Unwarranted Sentencing Disparities

The Government submits that a sentence of 365 months' imprisonment would not introduce any unwarranted sentencing disparities. Espinosa is the only person in this case who is charged and convicted of shooting and killing someone. The extreme nature of that conduct sets him apart from all of his co-defendants, even the two other co-defendants who participated in the murder. Although Jones and Morgan played important roles in the murder, Espinosa had the most culpable role; Espinosa was the sole shooter and appears to have planned it from the outset. It is therefore more than appropriate that Espinosa would receive a sentence of imprisonment above the sentence imposed on Jones, who received a sentence of 360 months' imprisonment, even accounting for the fact that Jones had a leadership role and committed or was present for the gang's other acts of violence. Morgan has not yet been sentenced and the other defendants are distinguishable on a number of factors, including that none of the other defendants were charged with participating in a murder in this case.

With respect to cases more generally, Espinosa points out that the average length of imprisonment for defendants with a Guideline of 2A1.1, offense level 40 and Criminal History Category I was 273 months' imprisonment and the median was 267 months' imprisonment. The average of course reflects the fact that there were many sentences of imprisonment above 273

months' imprisonment. Moreover, it is unclear from this data point how many of these crimes were committed as part of a participation in a violent gang, involved a young victim, involved armed drug dealing in addition to the murder, and further involved additional serious criminal conduct while in custody.

The Government recognizes that the defendant was 17 years old when he murdered Scruggs, which is of course a consideration for the Court in sentencing. The Government respectfully submits that but for his age, a sentence above the guidelines could well be appropriate given the circumstances of the killing in this case, its connection with a violent gang, the fact that it took the life of a 19 year old. Moreover, the defendant's conduct in the 5 years since the murder, evidence that the defendant, as an adult, has doubled-down on his choice to be a member of the gang, has participated in a violent prison assault, possessed a dangerous knife and contraband phones. These activities distinguish Espinosa from many other defendants. Moreover, in this case, we have the opportunity to see how the defendant has behaved in the intervening years, even under controlled in custody environments, and Espinosa has made clear that his dangerousness and commitment to the gang were not fleeting parts of his teenaged life, they are also who Espinosa is choosing to be as an adult.

5. Deportation and Conditions of Confinement

Espinosa asks the Court to consider the fact that he will likely be deported after serving his sentence in this case because he came to this country illegally and has no lawful status. While the Court can of course consider that he may well be deported after serving his sentence, the Government submits that this is entitled to much less weight given that he used his time and opportunities in this country to join a gang and kill someone.

Espinosa also asks the Court to sentence him to a lower sentence of imprisonment given the circumstances at MDC, including frequent lockdowns. However, as repeated throughout, Espinosa is part of what is causing the problem and requiring lockdowns at the MDC. Espinosa's possession of a deadly weapon, which he was willing to proudly display in a photograph posted on Instagram is truly alarming and created a danger for fellow inmates as well as corrections' officers. Espinosa also participated in an assault and possessed multiple contraband cellphones that he has used for months at end. Espinosa should not receive the benefits of a lower sentence of imprisonment for conditions that he has had some responsibility for helping to create.

III. Conclusion

For the reasons set forth above, the Government respectfully requests that the Court impose a top of the Guidelines sentence of 365 months' imprisonment.

Respectfully Submitted,

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